



March 8, 2001

Ms. Betsy Elam
Taylor, Olson, Adkins, Sralla & Elam
3400 Bank One Tower
500 Throckmorton Street
Fort Worth, Texas 76102-3821

OR2001-0910

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144838.

The City of Azle (the "city"), which you represent, received a request for "the contract between the city and the private developers of the 30 lots in the Lake Ridge Estates." You claim that the requested information is excepted from disclosure under section 552.105 of the Government Code. The requestor also submitted written comments to this office. See Gov't Code § 552.304. We have considered the exception you claim and the comments of the requestor, and have reviewed the submitted information.

Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Under section 552.105, a governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 at 3 (1982) (quoting Open Records Decision No. 222 (1979)). Information excepted under section 552.105 that pertains to such

negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). This office has concluded that information about specific parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. Open Records Decision No. 564 at 2 (1990). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good faith determination in this regard, unless the contrary is clearly shown as a matter of law. Open Records Decision No. 564 (1990).

You state that the city is in the process of negotiating to purchase and develop real property for the public purpose of promoting economic development and providing a tax base within the city of Azle. You further state that there has been no public announcement of the project and the exact location of the property to be acquired has not been disclosed. We note, however, that in correspondence to this office, the requestor has demonstrated that he has determined the location of the five lots which remain to be purchased. Further, you have made no arguments for how release of the requested information will harm the city's negotiating position with regard to the transaction at issue. Moreover, the requested contract does not disclose information about the value of the property that the city is developing. Therefore, we do not believe that you have demonstrated the applicability of section 552.105 to the information at issue. Thus, as you raise no other exceptions to disclosure, you must release the requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 144838

Encl. Submitted documents

cc: Ms. Corky Miller
P.O. Box 360
Azle, Texas 76098
(w/o enclosures)